IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 16891 of 2006(J)

PETITIONER:

POOVARANY SERVICE CO-OPERATIVE BANK LTD.
NO.2882, POOVARANY P.O., KOTTAYAM
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENTS:

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1. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), MEENACHIL, PALA.

2. SPECIAL SALE OFFICER, POOVARANY S.C.B.GROUP, OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, MEENACHIL, PALA.

3. JOMY JOSE, W/O. TOMY PETER, PERUVACHIRA, MALLIGASSERY, PRESENTLY RESIDING AT ATHIRAMPUZHA HOUSE, NEERIKODE, ALAMGADU.

4. P.J. JOSE, PERUVACHIRA, MALLIKASSERI. P.O.

5. P.J. THOMAS, PERUVACHIRA, EDAMATTOM P.O.

6. MATHEW JOSEPH, PAMPALANI VADAKKEPURAKKEL, POOVARANY, PALA.

7. JOY SKARIA, CHERUTHODUKAYIL HOUSE, KADAPLAMATTOM.

BY ADV. SRI.C.A.JOY
SRI.SUNIL CYRIAC
SMT.N.SINDHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1	True copy of the arbitration award in No.434/98 as relating to Loan No.MT600/95 dated 14.4.1998.
Ext.P1(a)	True copy of the arbitration award in No.4509/98 as relating to Loan No.DL 848/96 dated 29.1.1999.
Ext.P1(b)	True copy of the sale notice issued by the 2nd respondent in E.A.No.2623/98 and 2587/99 dated 21.11.2005.
Ext.P2	True copy of the arbitration award in NO.435/98 as relating to Loan No.MT 603/95 dated 14.4.1998.
Ext.P2(a)	True copy of the sale notice issued by the second respondent in E.A.No.2624/98 and 2587/99 dated 21.11.2005.
Ext.P3	True copy of the arbitratal award in No.2431/99 as relating to Loan No.PL 1334/97 dated 27.1.2000.
Ext.P3(a)	True copy of the arbitratal award in No.2488/99 as relating to Loan No.OL 225/97 dated 18.2.2000.
Ext.P3(b)	True copy of the sale notice issued by the second respondent in E.A.NO. 1746/00 and 1769/00 dated 21.11.2005.
Ext.P4	True copy of the arbitratal award in No.1179/99 as relating to Loan No.DL 1284/97 dated 13.8.1999.
Ext.P4(a)	True copy of the arbitratal award in No.1201/99 as relating to Loan No.OL 190/97 dated 13.8.1999.
Ext.P4(b)	True copy of the sale notice issued by the second respondent in E.A.No.214/99 and 225/00 dated 21.11.2005.

Ext.P5 True copy of the encumbrance certificates of the property.

Ext.P6 True copy of the notice of sale.

Ext.P7 True copy of the judgment of this Hon'ble Court in W.P. (C) 2658/2006 dated 14.3.2006.

Ext.P8 True copy of the objections filed by the petitioner in C.R.P. (1) 3013/06 dated 31.5.2006.

Ext.P9 True copy of the Order dated 29.6.2006 in CRP(1) 3013/06.

Ext.P10 True copy of the stay order dated 26.7.2006 in W.P.(C) 19501/2006.

RESPONDENT'S EXHIBITS:

Ext.R4(a) True copy of order No.C.R.P.(1) 301 3/06/K.Dis dated 29.6.2006 issued by J.R. of Co.Op. Societies, Kottayam.

Ext.R4(b) A true copy of the representation dt. 11.7.2006 submitted to the petitioner Bank.

//true copy//

P.S. to Judge.

J.M. JAMES, J.

W.P.(C) No. 16891 of 2006

Dated this the 8th January, 2007.

J U D G M E N T

The writ petitioner is the Co-operative Bank to whom respondents 3 to 6 are the debtors and defaulters. The property of the 4th respondent was mortgaged for the loans availed by respondents 3 to 6. Because of the default, the property was brought to sale. Seventh respondent is the auction purchaser in the public auction. He deposited a portion of the bid amount. It is submitted by the counsel for the respondents 4 and 5 that the balance bid amount was not deposited by the 7th respondent, and, therefore, the sale was not confirmed. Counsel for the writ petitioner submits that it is because of the stay that the 7th respondent could not remit the balance amount, and complete the proceedings of the sale, in public auction.

2. Through the order in W.P.(C) No.2658/2006, dated 14.3.2006, this Court directed the writ petitioner to remit an amount of Rs.60,000/= on 31.3.2006, and, thereafter, continue to remit Rs.60,000/= each, for the succeeding months. It is submitted by the counsel for respondents 3 and 4 that an amount of Rs.60,000/= was

remitted at the first instance and the second instalment fell due on the consecutive holidays. Therefore, when the amount was paid on the next working day, it was not received by the writ petitioner, Bank. It is submitted that as the matter was pending before the Joint Registrar challenging the conducting of the sale, the fact of non receipt of the amount was also placed before him, under Ext.P9, dated 29.6.2006. The Joint Registrar (General), Kottayam, has passed an order, directing respondents 3 and 4, to avail one time settlement facility, and the writ petitioner Bank to extend the facilities of the said scheme.

3. I have heard the arguments advanced by both sides. Respondents 3 to 6 are the agriculturists. They are prepared to abide by the terms under the one time settlement scheme. Therefore, without expressing any opinion on the merit of the matter, as are being contented by the counsel on either side, I direct the writ petitioner to allow respondents 3 to 6 to avail an one time settlement scheme, as is now existing, applicable to the Co-operative Banks. Respondents 3 to 6 shall approach the writ petitioner Bank with representation(s) requesting for an one time settlement facility, within 10 days from today. On receipt of the same, the writ petitioner shall hear all concerned and dispose of the same, extending the facilities

and benefits available under the one time settlement scheme, as per Circular No.59/2006, dated 30.11.2006. This shall be done within three weeks from the date of making the request for one time settlement facility, as stated above.

4. Till a final decision is taken, after hearing all concerned, by the writ petitioner Bank, there shall be no coercive action against respondents 3 to 6.

5. The 7th respondent, auction purchaser, shall also approach the writ petitioner Bank, and any representation filed earlier or pending or that would be filed now, shall be considered, and the amount deposited, at the time of the public auction shall be returned to the 7th respondent, under Rule 83(4) of the Kerala Co-operative Societies Rules, 1969, as the sale is not confirmed.

6. In case of any default on the part of respondents 3 to 6 in complying with the directions of the writ petitioner to remit the amount, as per the one time settlement facility, the writ petitioner shall proceed against them, as per the law.

7. I am not entering into any discussion regarding the alleged sale that have been made by respondents 3 and 4, on the property, that was pledged with the writ petitioner bank, at the time of availing of the loan, by respondents 3 to 6. The property continue to remain pledged with the Bank basing on the loans availed by respondents 3 to 6.

The writ petition is disposed of as above.

J.M. JAMES,
JUDGE

nj.